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**CITY OF SEABROOK
ORDINANCE NO. 2016-21**

AMENDING NUNC PRO TUNC THE NOISE REGULATIONS ORDINANCE

AN ORDINANCE AMENDING ORDINANCE 2012-16 NUNC PRO TUNC, TO CORRECT SCRIVNER'S ERROR BY AMENDING CHAPTER 55 OF THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, ENTITLED "NUISANCES AND MISCELLANEOUS PROVISIONS," ARTICLE II, ENTITLED "NOISE," BY REVISING REFERENCES IN SECTION 55-26, "ENFORCEMENT," PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Seabrook is continually reviewing the provisions of the Code of Ordinances; and

WHEREAS, heretofore previously, on or about September 4, 2012, the City Council of the City of Seabrook did enact Ordinance No. 2012-16 for the purpose of amending Chapter 55 "Nuisances and Miscellaneous Provisions", Article II "Noise" of the Code of Ordinances; and

WHEREAS, Ordinance No. 2012-16 inadvertently contained erroneous references in Section 55-26 (c), referring incorrectly to Section(s) 50, where the proper reference should have been Section 55; and

WHEREAS, approval of the same *nunc pro tunc* (then as now) is appropriate to clarify and correct the subject errors and provide for proper references as approved by City Council on September 4, 2012;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS:

SECTION 1. FINDINGS.

The City Council of the City of Seabrook adopts the preceding preamble paragraphs as if repeated verbatim herein and find them as matters of fact.

SECTION 2. AMENDMENT TO THE SEABROOK CITY CODE

Chapter 55 of the Code of Ordinances of the City Of Seabrook entitled, "Nuisances and Miscellaneous Provisions," Article II, entitled "Noise," is hereby amended by revising text in current Section 55-26, "Enforcement" as follows:

“Sec. 55-26. Enforcement.

(a) The chief of police will have primary responsibility for the enforcement of the noise regulations contained herein. Nothing in this chapter shall prevent the chief of police from having the authority to obtain voluntary compliance by way of warning, notice or education.

(b) If a person's conduct would otherwise violate this chapter and consists of speech or communication delivered to others who have gathered to hear or observe speech or communication; or to others who have gathered to picket or otherwise express in a non-violent manner a position on social, economic, political or religious questions; the person who is in violation of this chapter shall be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation, prior to arrest or a citation being issued. The affirmative defenses for speech or expression enumerated in V.T.C.A., Penal Code § 42.04 (prior order to move, disperse or remedy) shall also be available in any prosecutions for violations of this article.

(c) Violation of any provision of this chapter shall be cause for a citation to be issued by the chief of police. In the event the noise violating this chapter is not stopped following issuance of a citation, the chief of police may issue an administrative stop order to any person having possession or control over noise generating property to immediately halt the making of any sound which exceeds the decibel levels in section ~~[50-23]~~ **55-23** or prohibitions proscribed in section ~~[50-24]~~ **55-24**.

(d) In the event a noise violation continues after the delivery of an administrative stop order, the chief of police may apply to any magistrate for an administrative search warrant for the purpose of entering private property to investigate and identify noise nuisance producing devices which are violating this chapter and their owners, and to temporarily seize the devices in the event the owner of the offending noise producing device has been convicted of a violation of this chapter in the previous year. Any noise producing devices seized under this section shall be returned to any person requesting their return and presenting proof of ownership following 24 hours after the seizure of the devices. Any disputed ownership of the seized property shall be resolved at a hearing before a magistrate of the city. Nothing herein shall prevent the city from exercising any other rights or remedies available under this chapter or by other laws.”

SECTION 3. INCORPORATION INTO THE CODE; PENALTY CLAUSE.

This Ordinance is hereby incorporated and made a part of the Seabrook City Code. Violation of this Ordinance is subject to the penalty section of said Code of Ordinance, Section 1-15 “General penalty; continuing violations” which provides that any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and,

upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

SECTION 4. REPEAL OF CONFLICTING ORDINANCES.

All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are hereby expressly repealed.

SECTION 5. SEVERABILITY.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 6. NOTICE.

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

PASSED AND APPROVED on first reading this _____ day of _____ 2016.

PASSED AND APPROVED on second and final reading this _____ day of _____ 2016.

By: _____
Glenn Royal
Mayor

ATTEST:

APPROVED AS TO FORM:

Robin Hicks, TRMC
City Secretary

Steven L. Weathered
City Attorney